

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DONALD DAVID MILLER  
PO Box 148  
Eureka, CA 95502

Registered Nurse License No. 494605

Respondent.

Case No. 2007-61

OAH No. 2008060914

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on March 4, 2009.

IT IS SO ORDERED February 4, 2009.



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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In the Matter of the Accusation Against:

DONALD DAVID MILLER

Registered Nurse License No. 494605

Respondent.

Case No. 2007-61

OAH No. 2008060914

**PROPOSED DECISION**

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 28, 2008, in Eureka, California.

Jeffrey M. Phillips, Deputy Attorney General, represented the complainant.

Donald David Miller (respondent) represented himself.

Evidence was received, the record closed, and the matter was submitted for decision on October 28, 2008.

**FACTUAL FINDINGS**

1. On September 8, 2006, complainant Ruth Ann Terry, M.P.H., R.N., made the accusation in her official capacity as Executive Officer, Board of Registered Nursing (board), Department of Consumer Affairs.

2. On August 31, 1993, the board issued registered nurse license number 494605 to respondent, which expires on November 30, 2008.<sup>1</sup>

3. Effective November 22, 2000, the Division of Occupational and Professional Licensing of the Utah Department of Commerce revoked respondent's license to practice as a registered nurse. The revocation resulted from a default order issued when respondent failed to respond to the notice of agency action. Respondent's Utah license was revoked

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<sup>1</sup> The lapsing or suspension of a license by operation of law, or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee, shall not deprive the board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the license, or to render a decision suspending or revoking the license. (Bus. & Prof. Code, § 2764.)

based on a finding that he engaged in unprofessional conduct as a result of unlawfully using marijuana "to the extent it may reasonably be considered to have impaired his ability to practice nursing."

4. On February 23, 2004, respondent pled nolo contendere and was convicted of violating Penal Code section 415, fighting in a public place. He was placed on 36 months of probation and ordered to complete a 26-week parenting class. There was no evidence that respondent completed the required parenting class.

5. This conviction arose from an argument that respondent had with his 14-year-old daughter, S.M., on June 7, 2003. She was upset when respondent refused to let her visit a friend late one evening or have another friend stay over at their house. S.M. yelled profanity at respondent. Respondent followed her into her bedroom and slapped her across the face. He pinned his daughter on the floor, held her down for about one minute, and told her that she was not acting appropriately. S.M. called the police. She suffered a small bruise and cut around her right eye and bruising under her left eye.

6. On February 23, 2004, respondent pled nolo contendere and was convicted of violating Penal Code section 243, subdivision (e)(1), battery of a spouse. He was placed on three years of probation, and ordered to complete a one-year batterer's program.

7. This conviction arose from an argument that respondent had with his wife on February 5, 2004. They were in their car arguing because respondent was frustrated that his wife was unable to find a church that she liked. Respondent grabbed her chin to force her to look at him while he was talking. She pulled away from him and he again grabbed her chin, and forced her to look at him. Respondent's wife suffered a small abrasion where he grabbed her.

8. On May 6, 2005, respondent pled nolo contendere and was convicted of violating Penal Code section 243, subdivision (e)(1), battery of a spouse. He was sentenced to 20 days in jail, and three years of probation.

9. This conviction arose from an argument that respondent had with his wife on September 11, 2004. They were watching a video with their 11-year-old son. His wife did not want their son to watch the video because of its language. Respondent took him into a bedroom. When he returned to watch the video, respondent kicked the stool on which his wife was sitting.

#### *Evidence of Rehabilitation and Other Matters*

10. Respondent has not yet complied with his February 2004 probationary requirement to complete a one-year batterer's program, as described in Factual Finding 6. From March 2004 to April 2005, respondent sporadically attended a batterer's program in Redding. During this time period, he attended 15 classes.

11. In March 2007, respondent enrolled in a batterer's program through Men and Women Experiencing Non-Abusive Directions (M/WEND). Respondent attended two assessment sessions and two group therapy sessions. He was terminated from the program on May 15, 2007, because he had two unexcused absences.

12. In November 2007, respondent met with Carol Coal, LCSW, and participated in the intake process for a batterer's program conducted by Breaking the Cycle. Shortly after, Ms. Coal informed respondent that he needed to pay the outstanding balances he owed M/WEND and her program before he could continue with the program. Respondent did not finish the intake process with Ms. Coal until April 2008, and did not pay the outstanding balance until August 2008. Respondent has been participating in the batterer's program at Breaking the Cycle since August 12, 2008. As of the date of hearing, he has participated in the program for 10 weeks. Respondent failed to meet one of the program's requirements and was noncompliant with the program's core requirements as a result. He is also required to participate in a substance abuse recovery support program, such as Alcoholics Anonymous (AA), three times a week while he is in the program. During one week, respondent only attended two recovery programs.

13. According to respondent, he regularly attended a recovery support group at his church from May through November 2006. Since then, he participated only intermittently until he was required to do so to attend the batterer's program at Breaking the Cycle. Respondent initially testified that his sobriety date was September 2003. However, he later acknowledged that he last used marijuana at his birthday party in the fall of 2005. Respondent had negative pre-employment drug tests in December 2003 and October 2006.

14. Respondent worked for Interim Healthcare Staffing (Interim) from December 2003 to September 2005. Interim's staffing manager indicated in a letter that respondent was an excellent and dependable nurse. Respondent also received a favorable evaluation, dated December 2004, from a hospital where he worked on assignment for Interim.

15. Respondent worked at Granada Healthcare and Rehabilitation Center (Granada) from July 2005 through August 25, 2007. In April 2007, he received a favorable annual review and met or exceeded performance expectations. He received the employee of the month awards in January, March, and November 2006. Kim Scott, RN, PHN, who worked with respondent at Granada, submitted a character reference attesting to respondent's excellent nursing skills and ability to work with the residents, their families, and the staff. Respondent was dismissed from Granada for reporting to work late and for failing to provide appropriate care to a patient.

16. Respondent has worked at the Northern California Community Blood Bank (blood bank) since January 2008. He recently began to be trained as a team leader, which is unusual after only six months on the job. He has been a model employee.

17. Respondent's wife, Maria Miller, who is also a registered nurse, filed a complaint with the board in December 2005. She filed the complaint because she was

concerned about respondent's addiction to marijuana and other drugs. She had seen respondent under the influence of drugs while he was at work and was concerned that his drug abuse was out of control. Ms. Miller testified that when she called the police on respondent, she was afraid for her safety and the safety of her family. According to Ms. Miller, she has seen her husband mature and has seen his personal growth. She believes that he has begun the healing process resulting from his own abuse as a child.

18. Respondent acknowledged that he did not take the requirement that he attend an anger management program as seriously as he should have. He believes that the program at Breaking the Cycle is very helpful and has resulted in valuable insight into his behavior. Respondent testified sincerely about his love of nursing and the satisfaction he received from caring for his patients.

#### *Appropriate Penalty*

19. The recommended discipline for a violation of Business and Professions Code section 2761, subdivision (a)(4), disciplinary action by another state, is revocation or revocation stayed with three years' probation. (Disciplinary Guidelines, p. 5.) The recommended discipline for a violation of Business and Professions Code section 2761, subdivision (f), conviction of an offense substantially related to the qualifications of a registered nurse, is revocation. (Disciplinary Guidelines, p. 6.)

20. The following factors are unfavorable to respondent: Respondent's criminal conduct involved child abuse and domestic violence, which are serious offenses. His Utah license was revoked based on illegal use of drugs. Respondent has failed to comply with the terms of his criminal probation, because he has not yet completed a year-long anger management course. While he was attending a course at the time of the hearing, he was not fully compliant with the course's requirements. Respondent has not participated in a substance abuse program, and has not consistently attended a substance abuse recovery support program until recently as part of his anger management program.

21. The following factors are favorable to respondent: None of the acts forming the basis for discipline involved harm to the public or patients. Respondent's criminal conduct occurred during a limited period of time, from June 2003 to September 2004. There was no evidence that respondent has any prior or subsequent criminal record. Respondent's current employer, who was aware of this disciplinary action, spoke highly of respondent's nursing abilities and personal attributes. There was no evidence that respondent is currently engaging in any illegal drug use or other substance abuse.

22. The most persuasive evidence in respondent's favor is that he has been a skilled and dedicated nurse. Although respondent engaged in serious misconduct, he has taken important steps to provide assurances that he can once again be a reliable and competent nurse. Weighing all of the evidence, and giving serious consideration to the factors established by the board's disciplinary guidelines, the public will be adequately

protected by suspending respondent's license for a short period of time, and placing him on probation with appropriate terms and conditions.

### *Cost Recovery*

23. Complainant requests costs for investigation and enforcement of this matter from August 2005 through October 2008 totaling \$12,087.50. The total includes \$10,632 for services by a deputy attorney general and \$1,455.50 for services by a paralegal. The deputy attorney general had numerous contacts with respondent, his employers, and the anger management program to check on respondent's progress. Although the requested costs are significantly higher than other cases of this type, the costs were justified by the deputy attorney general's tireless efforts to resolve this matter.

24. Respondent earns \$20 an hour working for the blood bank. He has seven children, ages 25, 24, 22, 19, and 15. All of them are living at least some of the time in respondent's home, except for his 19-year-old daughter. Respondent acknowledged that he would like to be able to pay the requested costs, but he is not financially able to do so. According to respondent, he and his wife live pay check to pay check, with little money left over at the end of the month. They have had financial problems in the past, and are currently unable to get any credit.

## LEGAL CONCLUSIONS

1. Complainant has the burden of proving by clear and convincing evidence to a reasonable certainty that respondent's license should be suspended or revoked. (See *Ettinger v. Board of Medial Quality Assurance* (1982) 135 Cal.App.3d 853, 855-6.)

2. The board may take disciplinary action against a licensed nurse for the suspension, restriction, or any other disciplinary action against a health care professional license or certificate by any other state of the United States, any other governmental agency, or another California health care professional licensing board. (Bus. & Prof. Code, § 2761, subd. (a)(4).) Based on Factual Finding 3, cause exists for discipline under this provision.

3. The board may take disciplinary action against a licensed nurse for the conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse. (Bus. & Prof. Code, §§ 490, 2761, subd. (f).) A conviction shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if it evidences to a substantial degree the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare, including but not limited to assaultive or abusive conduct including, but not limited to, those violations listed in Penal Code Section 11160, subdivision (d). (Cal. Code Regs., tit., 16, § 1444, subd. (a).) The board may inquire into the circumstances surrounding the commission of the crime in order to determine the discipline to be imposed, or to determine

if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. (Bus. & Prof. Code, § 493.)

4. A violation of Penal Code section 242, battery, is listed in Penal Code section 11160, subdivision (d)(8), and, therefore, involves assaultive or abusive conduct. A violation of Penal Code section 243, subdivision (e), battery upon a spouse, is also assaultive or abusive conduct. Any person who unlawfully fights in a public place is guilty of a violation of Penal code section 415, subdivision (1). Based on Factual Findings 4-9, the circumstances surrounding respondent's convictions for these offense established that they each involved assaultive or abusive conduct. Therefore, grounds exist to discipline respondent under Business and Professions Code sections 490 and 2761, subdivision (f), as a result of these convictions, individually and jointly.

5. The board shall consider the disciplinary guidelines entitled, "Recommended Guidelines for Disciplinary Orders and Conditions of Probation," effective October 2002 (cited as Disciplinary Guidelines). (Cal. Code Regs., tit. 16, § 1444.5.)

6. In determining whether revocation, suspension or probation is imposed in a given case, the following factors should be considered: the nature and severity of the acts, offenses, or crimes under consideration; actual or potential harm to the public; actual or potential harm to any patient; prior disciplinary record; number and variety of current violations; mitigation evidence; rehabilitation evidence; compliance with the conditions of sentence and court-ordered probation; overall criminal record; time passed since the acts or offenses occurred; and evidence of expungement proceedings pursuant to Penal Code section 1203.4. (Disciplinary Guidelines, p. 3.)

7. The following may demonstrate the respondent's rehabilitative efforts and nursing competency: written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence; letters from counselors regarding respondent's participation in a rehabilitation or recovery program; letters describing respondent's participation in support groups, such as Alcoholics Anonymous and Narcotics Anonymous, etc., and sobriety date; laboratory analyses or drug screen reports; performance evaluations from respondent's employer; physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant; and certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. (Disciplinary Guidelines, p. 16.)

8. Successful completion of a drug/alcohol treatment program of a minimum of six months' duration shall be considered in determining rehabilitation for abuse of alcohol or other drug-related offenses. The program should include at least the following elements: chemical-free treatment philosophy; individual and/or group counseling; random, documented biological fluid screening; participation in nurses' (or other professionals') support group; education about addictive disease; adherence to a 12-step recovery program philosophy, or equivalent; and written documentation of participation in 12-step recovery groups, or equivalent. In addition, respondent should be employed in nursing for a minimum

of six months with documentation that the employer was aware of the previous drug or alcohol abuse problems. Documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use, and that the respondent performed nursing functions in a safe and competent manner. (Disciplinary Guidelines, p. 15.)

9. Complainant seeks an order to recover the reasonable costs of investigation and enforcement in this case as authorized by Business and Professions Code section 125.3. Several factors must be considered when evaluating a request to recover costs: whether respondent obtained dismissal of charges or a reduction in the severity of the discipline imposed; respondent's subjective good faith belief in the merits of his position; whether respondent raised a colorable challenge to the proposed discipline; whether respondent is financially able to pay the costs; and whether the scope of the investigation was appropriate for the alleged misconduct. (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.)

10. As determined in Factual Finding 23, complainant requested that respondent pay \$12,087.50 in investigative and enforcement costs. The hearing sustained the charges complainant brought against respondent, and resulted in a significant penalty. The requested costs were justified by the amount of time spent trying to resolve this matter without a hearing. Based on Factual Finding 24, the evidence established that paying the requested costs will pose a significant financial burden on respondent. Considering all of the factors, \$8,000 is a reasonable amount for the board's investigative and enforcement costs in this matter. It is also reasonable to allow the board to determine the manner and means by which respondent shall pay these costs.

## ORDER

The registered nurse license number 494605 issued to respondent Donald David Miller is revoked. However, the revocation is stayed, respondent's license is suspended for 10 days, and respondent is placed on probation for four years on the following conditions.

Each condition of probation contained is a separate and distinct condition. If any condition of this Order, or any application of it, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications of it, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Actual Suspension of License:** Respondent is suspended from the practice of registered nursing for 10 days, beginning the effective date of this decision. During the suspension period, all conditions of probation are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.



2. **Obey All Laws:** Respondent shall obey all federal, state, and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the board in writing within 72 hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

3. **Probation Program:** Respondent shall fully comply with the conditions of the probation program established by the board and cooperate with representatives of the board in its monitoring and investigation of respondent's compliance with the board's probation program. Respondent shall inform the board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the board, including during any period of suspension.

a. Upon successful completion of probation, respondent's license shall be fully restored.

4. **Report in Person:** Respondent, during the period of probation, shall appear in person at interviews or meetings as directed by the board or its designated representatives.

5. **Residency, Practice or Licensure Outside California:** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he resides outside of California. Respondent must provide written notice to the board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

a. Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the board if he applies for or obtains a new nursing license during the term of probation.

6. **Written Reports:** Respondent, during the period of probation, shall submit or cause to be submitted such written reports, declarations, and verification of actions under penalty of perjury, as required by the board. These reports and declarations shall contain statements relative to respondent's compliance with all the conditions of the board's probation program. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

a. Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

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7. **Function as a Registered Nurse:** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the board.

a. For purposes of compliance with the section, “engage in the practice of registered nursing” may include, when approved by the board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

b. The board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the board.

c. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent’s probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

8. **Employment Approval and Reporting Requirements:** Respondent shall obtain prior approval from the board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the board all performance evaluations and other employment related reports as a registered nurse upon request of the board.

a. Respondent shall provide a copy of this decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

b. In addition to the above, respondent shall notify the board in writing within 72 hours after he obtains any nursing or other health care related employment. Respondent shall notify the board in writing within 72 hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

9. **Supervision:** Respondent shall obtain prior approval from the board regarding respondent’s level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

a. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the board, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

b. Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(1) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(2) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(3) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(4) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the board, periodic, on-site visits to patients' homes visited by respondent with or without respondent present.

**10. Limitations on Employment:** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

a. Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the board. Respondent shall not work in any other registered nursing occupation where home visits are required.

b. Respondent shall not work in any health care setting as a supervisor of registered nurses. The board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

c. Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a board-approved continuing education program.

d. Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

e. If respondent is working or intends to work in excess of 40 hours per week, the board may request documentation to determine whether there should be restrictions on the hours of work.

11. **Nursing Course:** Respondent, at his own expense, shall enroll and successfully complete a course relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

a. Respondent shall obtain prior approval from the board before enrolling in the course. Respondent shall submit to the board the original transcripts or certificates of completion for the above required course. The board shall return the original documents to respondent after photocopying them for its records.

b. In the board's discretion, this condition of probation may be satisfied by respondent's successful completion of a one-year anger management course, as required by his criminal probation described in Factual Finding 6.

12. **Cost Recovery:** Respondent shall pay to the board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$8,000. Respondent shall be permitted to pay these costs in a payment plan approved by the board.

a. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

13. **Violation of Probation:** If respondent violates the conditions of his probation, the board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license.

a. If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the board.

14. **License Surrender:** During respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the board. The board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

a. Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the board. A registered nurse whose license has been surrendered may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision: (1) two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness, or (2) one year for a license surrendered for a mental or physical illness.

**15. Treatment/Rehabilitation Program for Chemical Dependence:**

Respondent, at his expense, shall successfully complete during the probationary period, or shall have successfully completed prior to commencement of probation, a board-approved treatment/rehabilitation program of at least six months' duration. As required, reports shall be submitted by the program on forms provided by the board. If respondent has not completed a board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the board shall consider respondent in violation of probation.

a. Based on board recommendation, each week respondent shall be required to attend at least one, but no more than five, 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

**16. Abstain from Use of Psychotropic (Mood-Altering) Drugs:** Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

a. Respondent shall identify for the board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

b. The board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

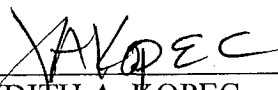
17. **Submit to Tests:** Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the board approves. The length of time and frequency will be subject to approval by the board. Respondent is responsible for keeping the board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the board, as directed. Any confirmed positive finding shall be reported immediately to the board by the program and respondent shall be considered in violation of probation.

a. In addition, respondent, at any time during the period of probation, shall fully cooperate with the board or any of its representatives, and shall, when requested, submit to such tests and samples as the board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

b. If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the board files a petition to revoke probation or an accusation, the board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

c. If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, respondent shall immediately cease practice and shall not resume practice until notified by the board. After taking into account documented evidence of mitigation, if the board files a petition to revoke probation or an accusation, the board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

Dated: November 21, 2008

  
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JUDITH A. KOPEC  
Administrative Law Judge  
Office of Administrative Hearings

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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2007-61

13 **DONALD DAVID MILLER**  
2674 Boone Street  
14 Fortuna, CA 95540

**A C C U S A T I O N**

15 Registered Nurse License No. 494605

16 Respondent.

17  
18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the  
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer  
22 Affairs.

23 2. On or about August 31, 1993, the Board issued Registered Nurse License  
24 Number 494605 to Donald David Miller ("Respondent"). The license will expire on  
25 November 30, 2006, unless renewed.

26 **STATUTORY PROVISIONS**

27 3. Business and Professions Code section ("Code") provides, in pertinent  
28 part, that the Board may discipline any licensee, including a licensee holding a temporary or an



1 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the  
2 Nursing Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a  
4 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
5 against the licensee or to render a decision imposing discipline on the license.

6 5. Code section 2811, subdivision (b), provides, in pertinent part, that the  
7 Board may renew an expired license at any time within eight years after the expiration.

8 6. Code section 2761 states, in pertinent part:

9 "The board may take disciplinary action against a certified or licensed nurse or  
10 deny an application for a certificate or license for any of the following:

11 (a) Unprofessional conduct, which includes, but is not limited to, the following:

12 (4) Denial of licensure, revocation, suspension, restriction, or any other  
13 disciplinary action against a health care professional license or certificate by another state or  
14 territory of the United States, by any other government agency, or by another California health  
15 care professional licensing board. A certified copy of the decision or judgment shall be  
16 conclusive evidence of that action.

17 (f) Conviction of a felony or of any offense substantially related to the  
18 qualifications, functions, and duties of a registered nurse, in which event the record of the  
19 conviction shall be conclusive evidence thereof."

20 7. Code section 490 states, in pertinent part:

21 A board may suspend or revoke a license on the ground that the licensee  
22 has been convicted of a crime, if the crime is substantially related to the  
23 qualifications, functions, or duties of the business or profession for which the  
24 license was issued. A conviction within the meaning of this section means a plea  
25 or verdict of guilty or a conviction following a plea of nolo contendere. Any  
26 action which a board is permitted to take following the establishment of a  
conviction may be taken when the time for appeal has elapsed, or the judgment of  
conviction has been affirmed on appeal, or when an order granting probation is  
made suspending the imposition of sentence, irrespective of a subsequent order  
under the provisions of Section 1203.4 of the Penal Code.

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1 **COST RECOVERY**

2 8. Code section 125.3 provides, in pertinent part, that the Board may request  
3 the administrative law judge to direct a licensee found to have committed a violation or  
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
5 and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Out-of-State Discipline)**

8 9. Respondent is subject to discipline for unprofessional conduct as defined  
9 by Code section 2761, subdivision (a)(4), in that on or about October 23, 2000, in a case entitled  
10 *In the Matter of the License of Donald David Miller to Practice as a Registered Nurse In the*  
11 *State of Utah, Case No. DOPL-2000-149*, a Default Order was entered and a Notice of Entry of  
12 Default and Recommended Order ("Order") was adopted by the Division of Occupational and  
13 Professional Licensing of the State of Utah wherein Respondent's license was revoked based on  
14 his failure to respond to a Notice of Agency Action<sup>1/</sup> within thirty (30) days. True and correct  
15 copies of the Order and the Notice of Agency Action are attached hereto as Exhibit A and  
16 Exhibit B, respectively.

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22 \_\_\_\_\_  
23 1. The agency action originated from a Petition filed on August 17, 2000, by the Division of Occupational  
and Professional Licensing ("Division") alleging the following which violate the licensing act:

24 a. On January 15, 1999, Respondent's employer performed a random drug test wherein Respondent  
tested positive for marijuana.

25 b. On March 12, 1999, and March 17, 1999, Respondent's employer performed a random drug test  
wherein the test results were adulterated due to a high level of nitrates in each sample.

26 c. Respondent was accepted into the Division's Professional Recovery Program pursuant to a  
September 6, 1999, agreement with the Division. Respondent failed to comply with the terms and conditions of  
the September 6, 1999, agreement, and was terminated from the program on February 26, 2000.

27 d. On April 7, 2000, Respondent's employer performed a random drug test wherein Respondent tested  
28 positive for marijuana.

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1 **PRAYER**

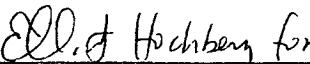
2 **WHEREFORE**, Complainant requests that a hearing be held on the matters  
3 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 494605, issued  
5 to Donald David Miller;

6 2. Ordering Donald David Miller to pay the Board of Registered Nursing the  
7 reasonable costs of the investigation and enforcement of this case, pursuant to Code  
8 section 125.3; and,

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: 9/8/2006

11   
12 RUTH ANN TERRY, M.P.H., R.N.  
13 Executive Officer  
14 Board of Registered Nursing  
15 Department of Consumer Affairs  
16 State of California  
17 Complainant

16 SA2005300714  
17 Accusation(kdg) 8/24/06

Default Order  
EXHIBIT A



State of Utah  
Department of Commerce

Division of Occupational and Professional Licensing

OLENE S. WALKER  
Governor

KLARE BACHMAN  
Executive Director

J. CRAIG JACKSON  
Division Director

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

State of Utah

County of Salt Lake

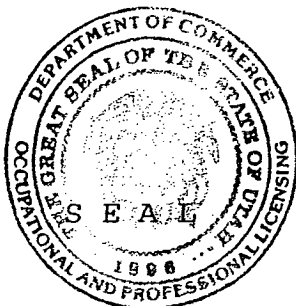
ss.

DONALD DAVID MILLER  
Case No. DOPL-2000-149

I hereby certify that the attached documents consist of a true and correct copy of the original Notice of Agency Action and Petition, Motion for Entry of Default and Affidavit of Non Response, Notice of Entry of Default and Recommended Order and Default Order in the above-entitled matter or cause, now of record or on file in the office of the Division of Occupational and Professional Licensing of the State of Utah.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Division this 22 day of June, 2004.

Carol W. Inglesby  
Administrative Assistant



BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

---

IN THE MATTER OF THE LICENSE OF  
**DONALD DAVID MILLER**  
TO PRACTICE AS A REGISTERED NURSE  
IN THE STATE OF UTAH

---

:  
:  
: **DEFAULT ORDER**  
:  
: Case No. DOPL-2000-149  
:

The attached Notice of Entry of Default and Recommended Order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah. Respondent's license is thus revoked, effective thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that the revoked license, both wall and wallet sizes, as well as any embossed certificate, thus be surrendered to the Division of Occupational and Professional Licensing.

Dated this 23 day of October, 2000.



*A. Gary Bowen*  
A. Gary Bowen  
Director

Pursuant to Subsection 63-46b-11(3), Respondent may seek to set aside the above-stated default order by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

---

IN THE MATTER OF THE LICENSE OF	:	NOTICE OF ENTRY
DONALD DAVID MILLER	:	OF DEFAULT AND
TO PRACTICE AS A REGISTERED NURSE	:	RECOMMENDED ORDER
IN THE STATE OF UTAH	:	CASE NO. DOPL-2000-149

---

**BY THE ADMINISTRATIVE LAW JUDGE:**

This adjudicative proceeding was initiated pursuant to the issuance of an August 23, 2000 notice of agency action. That notice was sent to Respondent's last known address by certified mail. The notice was thus received August 31, 2000.

The August 23, 2000 notice required Respondent to file a written response within thirty (30) days from the date of the notice. Respondent failed to file any written response in this proceeding. The August 23, 2000 notice recites Respondent could be held in default without further notice to him if he failed to timely file a response. The notice also recites Respondent's license could be revoked if he were thus held in default.

U.C.A. §63-46b-11(c) provides an order of default may enter if a respondent in a formal adjudicative proceeding fails to file a response. The Division filed an October 8, 2000 motion to enter Respondent's default based on his failure to have filed a response. That motion was further supported by an October 12,



2000 affidavit, which reflects that notice of this proceeding was sent to Respondent's last known address by certified mail, duly received at that address and Respondent had not filed a response.

The Court concludes a proper basis exists to enter Respondent's default and his default is so entered. After entry of a default order, §63-46b-11(4)(a) provides further proceedings may be conducted as necessary to complete the adjudicative proceeding without the participation of the party in default and a determination shall be made of all issues in the adjudicative proceeding.

R151-46b-10(10) sets forth the procedure which governs the entry of the default of any party. Specifically, R151-46b-10(10)(a) provides:

(i) The presiding officer may enter the default of a party in accordance with Section 63-46b-11, sua sponte or upon motion of a party.

(ii) A party filing a motion for entry of default shall also file an affidavit substantiating the grounds for the motion.

(iii) If the submissions establish a basis for entry of default, the presiding officer may enter the default without notice to the defaulting party or a hearing.

R151-46b-10(10)(b) further provides:

(i) Following the entry of default, the presiding officer may, sua sponte or upon motion of a party, conduct further proceedings and enter the final order based on the submissions filed without notice to or participation by the defaulting party:

(A) the relief sought against the party is specifically set forth in the pleadings

which were served upon that party;

(B) the factual allegations contained in those pleadings are supported by affidavit or by a verified petition; and

(C) those factual allegations, and applicable law, support the granting of the relief sought against that party.

R151-46b-10(c) further provides that the order of default and the final order "may be concurrently issued".

The Court, having duly reviewed the October 8, 2000 motion for entry of Respondent's default, the October 12, 2000 affidavit in support of that motion and the August 17, 2000 Petition, now enters its Findings of Fact, Conclusions of Law and submits the following Recommended Order for review and action by the Division:

#### **FINDINGS OF FACT**

1. Respondent is, and at all time relevant to this proceeding has been, licensed to practice as a registered nurse in this state.

2. Respondent was subject to random drug analysis required by his employer on January 15, 1999. Those test results reflected the presence of marijuana.

3. Respondent was again subject to random drug analysis on March 12, 1999 and March 17, 1999. Those test results were adulterated as reflected by a high level of nitrates in each sample. Respondent admitted to his employer and a Division investigator that he had taken an herbal liquid prior to those

drug tests. The makers of the liquid had advertised that it could produce a false negative on a drug screen if taken shortly before the test was conducted.

4. Respondent was accepted into the Division's Professional Recovery Program pursuant to a September 6, 1999 agreement, which sets forth the terms and conditions governing Respondent's participation in that program. Respondent failed to comply with the September 6, 1999 agreement and he was terminated from the program on approximately February 26, 2000.

5. Respondent was again subjected to random drug analysis on April 7, 2000. Those test results also reflected the presence of marijuana.

#### **CONCLUSIONS OF LAW**

§58-1-401(2) provides the Division may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee who:

(a) . . . has engaged in unprofessional conduct, as defined by statute or rule under this title.

§58-1-501(2) generally defines unprofessional conduct to include:

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee . . . to safely engage in the occupation or profession  
. . . .

§58-31b-502(5) specifically defines unprofessional conduct in the

practice of nursing to include:

(5) unlawfully obtaining, possessing, or  
using any prescription drug or illicit drug .  
...

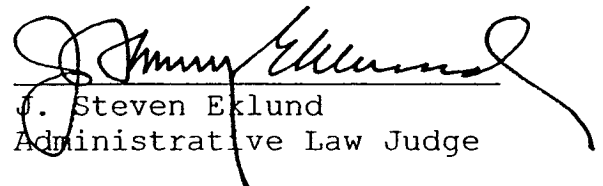
Respondent has engaged in unprofessional conduct violative of §58-1-501(2)(e) and §58-31b-502(5). Specifically, Respondent has unlawfully used marijuana to the extent it may reasonably be considered to have impaired his ability to practice nursing.

Accordingly, a sufficient factual and legal basis exists to enter a disciplinary sanction as to Respondent's license. Absent any matters offered in defense or mitigation, the Court necessarily concludes the Recommended Order set forth below is warranted.

#### **RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED Respondent's license to practice as a registered nurse in this state shall be revoked.

I hereby certify the foregoing Notice of Entry of Default, Findings of Fact, Conclusions of Law and Recommended Order were submitted to A. Gary Bowen, Director of the Division of Occupational and Professional Licensing, on the 18<sup>th</sup> day of October, 2000 for his review and action.

  
J. Steven Eklund  
Administrative Law Judge

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
Heber M. Wells Building  
160 East 300 South - P.O. Box 146741  
Salt Lake City, Utah 84114-6741  
Telephone: (801) 530-6628

---

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**OF THE DEPARTMENT OF COMMERCE**  
**OF THE STATE OF UTAH**

---

IN THE IN THE MATTER OF	:	
THE LICENSE OF	:	<b>MOTION FOR ENTRY</b>
<b>DONALD DAVID MILLER</b>	:	<b>OF DEFAULT</b>
TO PRACTICE AS A	:	
REGISTERED NURSE	:	
IN THE STATE OF UTAH	:	CASE NO. DOPL-2000-149

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The Division of Occupational and Professional Licensing [Petitioner] of the Department of Commerce of the State of Utah hereby moves for entry of a default judgment on its Petition in the above-entitled matter. In support of the motion Petitioner states:

1. On August 23, 2000 copies of the Notice of Agency Action (Notice) and the Petition were sent to Donald David Miller [Respondent] by certified mail through the United States Postal Service to his last known address.

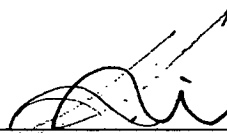
2. On August 31, 2000 Respondent signed the mail certificate for receipt of the Notice and the Petition.

3. Respondent has failed to answer the Petition or in any way respond or defend it in writing in the 30 days since he received the Notice and Petition as required by UTAH CODE ANN. § 63-46b-6 (1997). (See attached Affidavit of Non-response).

WHEREFORE, Petitioner requests the court find Respondent in default pursuant UTAH CODE ANN. § 63-46b-11(1)(c) (1997) and requests the court to enter a judgment for Petitioner as follows:

- A. That Respondent be adjudged and decreed to have engaged in the acts alleged herein;
- B. That by engaging in the above acts, Respondent be adjudged and decreed to have violated the provisions of the Division of Occupational and Professional Licensing Act.
- C. That Respondent's license to practice as a registered nurse in the State of Utah be revoked.

DATED this 8th day of October, 2000.

A handwritten signature in black ink, appearing to read 'Lorrie Lima', is written over a horizontal line.

LORRIE LIMA  
Assistant Attorney General

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

---

IN THE MATTER OF THE LICENSE OF  
**DONALD DAVID MILLER**  
TO PRACTICE AS A REGISTERED NURSE  
IN THE STATE OF UTAH

---

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: **AFFIDAVIT OF**  
: **NON-RESPONSE**  
: Case No. DOPL-2000-149  
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:

STATE OF UTAH                                 )  
  :   SS.  
COUNTY OF SALT LAKE                         )

Carol W. Inglesby, first being duly sworn, deposes and states as follows:

1. I am the Administrative Assistant for the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah.

2. In that capacity, I am responsible for supervising the mailing of the Division's Petitions and for receiving any responses filed by licensees.

3. On August 23, 2000, the Division mailed a Petition to Donald David Miller at his last known address of 491 Kirk Street, Layton, UT 84041, along with a Notice of Agency Action advising him that a default order might be entered if he failed to file a written response to the Petition within thirty (30) days of the date of the Notice of Agency Action.

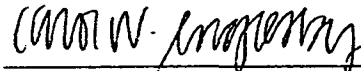
4. That mailing was returned to the Division by postal

authorities with a notation of a new address of 1437 Adams Avenue, Ogden UT 84404 for Respondent. On August 29, 2000, the Division again mailed the Petition and Notice of Agency Action to Respondent.

5. The Petition was received by D. Miller on August 31, 2000.

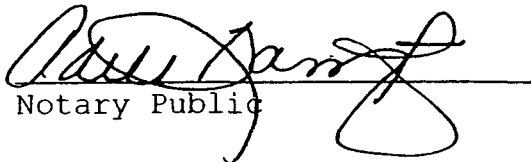
6. As of the date of this Affidavit, the Division has not received a response from Donald David Miller.

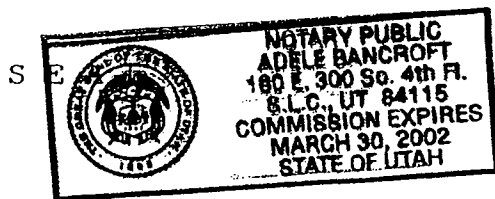
DATED this 12 day of October, 2000.



Carol W. Inglesby  
Administrative Assistant

Appeared before me this 12 day of October, 2000, Carol W. Inglesby, who acknowledges the foregoing to be accurate to the best of her knowledge and belief.

  
Notary Public





Notice of Agency Action  
EXHIBIT B

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
Heber M. Wells Building  
160 East 300 South  
P O Box 146741  
Salt Lake City UT 84114-6741  
Telephone: (801) 530-6628

---

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

---

IN THE MATTER OF THE LICENSE OF	:	
<b>DONALD DAVID MILLER</b>	:	<b>NOTICE OF AGENCY ACTION</b>
TO PRACTICE AS A	:	
REGISTERED NURSE	:	
IN THE STATE OF UTAH	:	Case No. DOPL-2000-149 /

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THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO  
THE ABOVE-NAMED RESPONDENT:

The Division of Occupational and Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of Shane Tiernan, Investigator, State of Utah, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. **Within thirty (30) days of the date of this notice, you are required to file a written response with this Division.** The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition.

You may represent yourself or be represented by legal counsel at all times while this action is pending. Your legal counsel shall file with the Division an Entry of Appearance no later than the filing of a response to the Verified Petition.

You are entitled by law to a hearing conducted before the Board of Nursing as to whether your license to practice as a registered nurse in the State of Utah should be subject to a disciplinary sanction. You will be notified by separate notice of the date, time, and place of any hearing.

During the hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence to the Board. After the hearing, the Board will act as a presiding officer to submit findings of fact, conclusions of law and a recommended order to the Director of the Division of Occupational and Professional Licensing for his subsequent review and action.

The presiding officer for purposes of conducting the hearing will be J. Steven Eklund, Administrative Law Judge, Department of Commerce. He will rule on any evidentiary issues and matters of law or procedure. If you have any questions as to the procedures relative to the hearing, Judge Eklund can be contacted at P O Box 146701, Salt Lake City, UT 84114-6701. His telephone number is (801) 530-6648.

Counsel for the Division in this case is Lorrie Lima, Assistant Attorney General at (801) 366-0300 or P O Box 140872, Salt Lake City, UT 84114-0872. Ms. Lima shall contact you or your counsel and the presiding officer conducting the hearing not later than thirty (30) days following the filing of your Response to schedule a prehearing conference.

You may attempt to negotiate a settlement of the case without proceeding to a hearing. Should you so desire, please contact Ms. Lima. Any agreement to resolve this proceeding in lieu of a hearing shall be in writing and executed by the parties no later than two (2) days prior to any subsequent hearing before the Board. All preliminary review of this case between the parties shall be completed prior to the date of said hearing.

Should you fail to timely file a response, as set forth above, or fail to appear for any scheduled prehearing conference(s) or hearing(s) in this case, you may be held in default without further notice to you. If you are held in default, the maximum administrative sanction consistent with the terms of the Verified Petition will be imposed against you. The maximum administrative sanction in this case is revocation of licensure.

Please conduct yourself accordingly.

Dated and mailed this 23<sup>RD</sup> day of August, 2000.

W. Ray Walker  
W. Ray Walker  
Enforcement Counsel

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
Heber M. Wells Building  
160 East 300 South - Box 146741  
Salt Lake City, Utah 84114-6741  
Telephone : (801) 530-6628

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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

---

IN THE MATTER OF THE LICENSE OF	:	
<b>DONALD DAVID MILLER</b>	:	<b>P E T I T I O N</b>
TO PRACTICE AS A	:	
REGISTERED NURSE	:	CASE NO. DOPL-2000- 149
IN THE STATE OF UTAH:	:	

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PRELIMINARY STATEMENT

These claims were investigated by the Division of Occupational and Professional Licensing (Division) upon complaint that Donald David Miller (Respondent) has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, UTAH CODE ANN. § 58-101-1 to 58-1-504 (1998) and the Nurse Practice Act, UTAH CODE ANN. § 58-1-31b to 58-31b-801.

PARTIES

1. The Division is a division of the Department of Commerce of the State of Utah as established pursuant to UTAH CODE ANN. § 13-1-2 (1998).
2. Respondent is licensed by the Division to practice as a registered nurse and he has held this license at all times relevant to the factual allegations raised in this petition.

### STATEMENT OF ALLEGATIONS

3. a. On approximately January 15, 1999 Respondent submitted to a random drug screen by his employer. The results of this test were positive for marijuana.

b. On approximately March 12, 1999 and again on approximately March 17, 1999 Respondent submitted to drug screens. These tests came back as adulterated due to a high level of nitrates in the sample. Respondent admitted to his employer and a division investigator that he had taken an herbal liquid prior to the drug screens. The makers of the liquid advertised it could produce a false negative on a drug screen if taken shortly before the drug screen was conducted.

c. Respondent was accepted into the Division's Professional Recovery Program (program). Respondent's participation in the program was conditioned on an agreement with terms and conditions. Respondent entered into the agreement with the Division on September 6, 1999. Respondent failed to meet the terms and conditions of the program and he was terminated from the program on approximately February 26, 2000.

d. On approximately April 7, 2000 Respondent was asked to submit to a drug screen by Division investigators. The test results were positive for marijuana.

### APPLICABLE LAW

4. The Division may "revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases:

(a) the applicant or licensee has engaged in unlawful or unprofessional conduct, as defined by statute or rule under this title."

UTAH CODE ANN. § 58-1-401(2) (1998).

5. Unprofessional conduct is defined to include:

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession...

UTAH CODE ANN. § 58-1-501(2)(e) (1998).

6. Unprofessional conduct is further defined to include:

(5) unlawfully obtaining, possessing, or using any prescription drug or illicit drug...

UTAH CODE ANN. § 58-31b-502(5) (1998).

#### COUNT I

7. Paragraphs 1 through 6 are hereby incorporated by reference.

8. Respondent abused marijuana to the extent that it may reasonably be considered to impair his ability to practice nursing. Respondent has engaged in unprofessional conduct under UTAH CODE ANN. § 58-1-401(2)(e) and § 58-31b-502(5) establishing grounds for sanctioning his license pursuant to UTAH CODE ANN. § 58-1-401(2) to practice as a nurse.

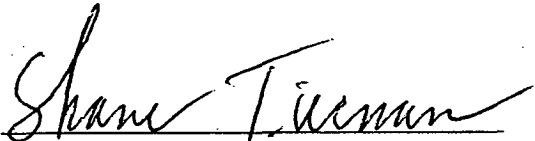
WHEREFORE, the Division requests the following relief:

1. That Respondent be adjudged and decreed to have engaged in the acts alleged herein;
2. That by engaging in the above acts Respondent be adjudged and decreed to have violated the enumerated provisions of the Division of Occupational and Professional Licensing Act, and;

3. That an order be issued imposing an appropriate sanction against Respondent's license to practice as a registered nurse in the State of Utah.

DATED this 17<sup>th</sup> day of August, 2000.

APPROVED FOR FILING



Division of Occupational and  
Professional Licensing  
Department of Commerce



LORRIE LIMA  
Assistant Attorney General

STATE OF UTAH

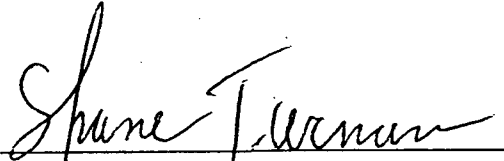
)

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COUNTY OF SALT LAKE

)

On the 17 day of August, 2000 personally appeared before me Shane Tiernan, and after being duly sworn, deposes, and says that he has read the foregoing Petition and knows the contents thereof and the same is true to the best of his knowledge except as to matters stated on information and belief and that as to those matters he believes it to be true.



SHANE TIERNAN

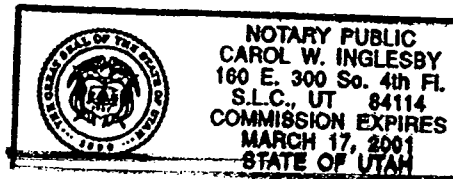
Investigator

Division of Occupational and  
Professional Licensing

SWORN AND SUBSCRIBED to before me this 17 day of August, 2000



NOTARY PUBLIC



3-17-2001